

About corruption

What we mean by corruption

The ICAC deals with corruption as it is defined in the ICAC Act. Below is the extract from the ICAC Act - Section 8 - which provides a definition of corruption, public officials and public authorities in the ICAC Act.

Section 8 - General nature of corrupt conduct

(1) Corrupt conduct is:

- a.** any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by any public official, any group or body of public officials or any public authority, or
- b.** any conduct of a public official that constitutes or involves the dishonest or partial exercise of any of his or her official functions, or
- c.** any conduct of a public official or former public official that constitutes or involves a breach of public trust, or
- d.** any conduct of a public official or former public official that involves the misuse of information or material that he or she has acquired in the course of his or her official functions, whether or not for his or her benefit or for the benefit of any other person.

(2) Corrupt conduct is also any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly, the exercise of official functions by any public official, any group or body of public officials or any public authority and which could involve any of the following matters:

- a.** official misconduct (including breach of trust, fraud in office, nonfeasance, misfeasance, malfeasance, oppression, extortion or imposition)
- b.** bribery
- c.** blackmail
- d.** obtaining or offering secret commissions
- e.** fraud
- f.** theft
- g.** perverting the course of justice
- h.** embezzlement,
- i.** election bribery
- j.** election funding offences
- k.** election fraud
- l.** treating
- m.** tax evasion,
- n.** revenue evasion
- o.** currency violations
- p.** illegal drug dealings
- q.** illegal gambling

- r. obtaining financial benefit by vice engaged in by others
- s. bankruptcy and company violations
- t. harbouring criminals
- u. forgery
- v. treason or other offences against the Sovereign
- w. homicide or violence
- x. matters of the same or a similar nature to any listed above
- y. any conspiracy or attempt in relation to any of the above.

(3) Conduct may amount to corrupt conduct under this section even though it occurred before the commencement of this subsection, and it does not matter that some or all of the effects or other ingredients necessary to establish such corrupt conduct occurred before that commencement and that any person or persons involved are no longer public officials.

(4) Conduct committed by or in relation to a person who was not or is not a public official may amount to corrupt conduct under this section with respect to the exercise of his or her official functions after becoming a public official.

(5) Conduct may amount to corrupt conduct under this section even though it occurred outside the State or outside Australia, and matters listed in subsection (2) refer to:

- a. matters arising in the State or matters arising under the law of the State, or
- b. matters arising outside the State or outside Australia or matters arising under the law of the Commonwealth or under any other law.

(6) The specific mention of a kind of conduct in a provision of this section shall not be regarded as limiting the scope of any other provision of this section.

What is corrupt conduct?

For the purposes of the ICAC's work, corrupt conduct is defined in sections 7 and 8 of the ICAC Act. For definitions of some of the many forms that corruption may take, go to the glossary.

The NSW community expects public officials to perform their duties with honesty and in the best interests of the public. Corrupt conduct by a public official involves a breach of public trust and leads to inequality, wasted resources and wasted public money. Corruption commonly involves the dishonest or preferential use of power or position that has the result of one person or agency being advantaged over another.

Corrupt conduct could involve:

- the dishonest or partial exercise of official functions, or
- a breach of public trust, or
- the misuse of information or material acquired in the course of official functions.

Examples of corrupt conduct

For the ICAC to be able to pursue a matter (that is, for the matter to be within ICAC jurisdiction), the corruption must involve a NSW public official or NSW public agency. Types of public sector conduct other than those defined in the ICAC Act, such as instances of poor administration, discrimination or a personal grievance are best referred to other complaint handling organisations such as the NSW Ombudsman, or the Anti-Discrimination Board. A matter is also outside the ICAC's jurisdiction if it relates to complaints against private sector organisations, non-public officials or Federal Government bodies in a way which has no connection to the public sector of

New South Wales.

Examples of corrupt conduct:

If you are unsure whether a matter involves corrupt conduct or should be reported, it is best to make the information known to the ICAC. Even if it does not involve corrupt conduct, the ICAC may also be able to refer you to a more appropriate organisation.

A public official uses (or misuses) public resources for their personal benefit

Examples:

A public official uses a work computer and work time to develop projects for private clients.

A public official claims travel allowances for trips not taken or claims expenses not incurred.

A public official uses an agency's earthmoving equipment to improve the value of his own home or does landscaping for his friends.

A public official claims overtime for periods when he is not working.

A public official carries out his or her public duties dishonestly or unfairly

Examples:

A council employee asks for money in return for awarding a contract.

A public official awards a government tender to a company in which they have a pecuniary (financial) interest.

A public official forges an approval on official letterhead to help out a business friend

A public official takes financial advantage of a client in their care who may be elderly, a person with a disability, or from a non-English speaking background.

A current (or former) public official misuses information or material obtained during the course of his or her duty

Examples:

A public official looks up driver licence information in response to a request from a friend

A public official (or former public official) provides confidential information to a company bidding for government work.

Anyone does something that could result in a public official carrying out public duties dishonestly or unfairly

Examples:

A company that wants to do business with a government agency offers a public official money or a gift to choose that company for the job.

Representatives of a private company regulated by a government agency take a government inspector to expensive lunches and social functions, or gives him or her gifts

A business pays a salary to a public official's wife (even though she is not in their employ) in return for expedited approvals

Tests of seriousness

If the ICAC is to consider investigating the matter, the conduct must also meet the conditions set out in section 9 of the ICAC Act that relate to seriousness.

These conditions are that the conduct must amount to a criminal offence, a disciplinary offence or constitute reasonable grounds for dismissing or otherwise terminating the services of a public

official.

In the case of a Member of Parliament, the test of seriousness may show that the conduct could amount to a substantial breach of an applicable code of conduct.

What is a public official?

For conduct to be considered corrupt under the ICAC Act it must involve a New South Wales public official or public authority.

A public official is defined in the ICAC Act as an individual having public official functions or acting in a public official capacity. Public authority employees and individuals who are members of certain boards such as the Board of the State Rail Authority, for example, would be considered public officials. In some circumstances private contractors and consultants are also public officials.

Public officials also include Ministers, other Members of the NSW Parliament, NSW local government councillors, and NSW judges and magistrates.

The ICAC cannot generally examine the conduct of NSW police officers. Since 1997, the Police Integrity Commission has had responsibility for investigating allegations of police corruption. The ICAC retains jurisdiction to investigate corruption by police officers when it also involves other public officials who are not police. The ICAC can also advise and assist the Police Service on corruption prevention and education.

In most cases, the ICAC has no jurisdiction over the federal government or its officers, interstate or foreign matters, or the conduct of private sector companies or individuals except when these may corruptly affect the way NSW public officials carry out their duties. Some examples are:

- a private company offers a bribe to a NSW public official involved in a tender process to induce the official to favour their company over others
- a private individual threatens a NSW public official not to report breaches of legislation.

What is a public authority?

A public authority is defined in section 3 of the ICAC Act and can include:

- a government agency, administrative office or teaching service
- a statutory body representing the Crown
- a declared authority under the *Public Service Act 1979*
- a local government authority
- a body required to keep certain accounts under the *Public Finance and Audit Act 1983*, or over which the Auditor-General has powers of audit.

In many cases it is obvious whether a particular body falls within the definition, For example, the Department of Community Services or the State Rail Authority. But there is a wide range of agencies which are also public authorities, including state owned corporations, government trading enterprises and local government councils.

The ICAC is concerned specifically with the NSW public sector - not Commonwealth authorities or those of other states.

Glossary

- **Blackmail**

Any payment obtained by intimidation, threats of injurious revelations or accusations. The extortion of this payment. A general term covering a number of statutory offences involving obtaining money and other property by using threats of violence, threats to accuse of a crime, or other menacing conduct. Making an unwarranted demand with menaces with a view to gain or to cause a loss, for example, threatening to publish embarrassing material unless something is done in return, such as money or favours.
- **Breach of policy or procedures:**

The breaking or violation of a law, right, obligation, engagement, or duty, either by commission or omission. For ICAC, it involves a breach of public service policies or procedures or internal policy or procedure developed by each organisation.
- **Bribe or bribery**

Any valuable consideration given or promised in return for corrupt behaviour in the performance of official or public duty. Anything given or serving to persuade or induce.
- **Collusion**

Secret agreement for a fraudulent purpose; conspiracy. An arrangement between persons to do some act in order to injure a third person or deceive the court. For example, private sector companies agree on amounts to quote for public sector work; various public sector employees conspire to protect another public sector employee
- **Compulsory Examination**

Replaces the term 'private hearing' under amendments to the ICAC Act which came into effect on 1 July 2005.
- **Conflict of interest**

Failure to provide information about a conflict of interest. To take advantage of that conflict of interest. For example, a Sydney Water employee fails to disclose a second job and conducted free inspections for their other employer.
- **Corruption**

Description from section 8 of the ICAC Act, 1988 - [Section 8 - General nature of corrupt conduct](#)
- **Cronyism (see also favouritism, nepotism)**

Unfair partiality shown, especially in political appointments, for one's friends. For example, a public sector employment selection panel convenor appoints his friend and neighbour as an internal member panel.
- **Currency violations**

Fraud concerning money. for example, a NSW public official covers up for a Commonwealth public official on a customs form about the amount of foreign money they bring into Australia.
- **Discrimination**

To make a distinction, as in favour of or against a person or thing. The power of making distinctions; discriminating judgment. For example, a person does not get a job because they were known to have made a protected disclosure at their last place of employment.
- **Destroying evidence**

The destruction of information or evidence. For example, shredding information that has been requested by the ICAC.

- **Duty to disclose (see also failure to disclose a conflict of interest)**

A responsibility or agreement to disclose information that may be relevant in a decision making process.

- **Embezzlement**

To appropriate to one's own use, money or property entrusted to one's possession.

- **Election bribery**

Bribery used specifically to influence situations where voting occurs.

- **Election fraud**

Fraud which occurs in relation to elections or voting. For example, to fake someone else's name and decision on a ballot form.

- **Extortion**

To use one's position or office to obtain money or other things of value, when none is due or not so much is due, or before it is due. Oppressive, threatening or illegal extraction - , as of excessive price or interest.

- **Fabrication**

To fake or forge. The process of creating a fake story or document, an untruthful statement.

- **Failure to advertise appropriately**

Failure to provide a means for a person's fair and reasonable ability to gain knowledge of an event.

- **Failure to disclose/ abuse of a conflict of interest**

Failure to provide information about a conflict of interest. Or to take advantage of that conflict of interest.

- **Failure to take action**

The failure to act upon information about corruption within the public sector.

- **Fraud**

Deceit, trickery, sharp practice, or breach of confidence, to gain some unfair or dishonest advantage.

- **Gifts**

Something given, a present, the act of giving, the power or right of giving. Corruption occurs when the gift is meant to, or would possibly influence, the public official.

- **Independent Commission Against Corruption Act**

Second Reading of Independent Commission Against Corruption Bill
Excerpt from Hansard, Legislative Assembly, 26 May 1988 - [Hansard Excerpt](#)

- **Improper use of information**

Using information to give a particular person an advantage. For example, sending out interview questions for a job to one of the applicants; using inside information to buy land which will be re-zoned.

- **Maladministration**

Inefficient, bad or improper administration. Maladministration is defined in the *Protected Disclosures Act* as 'conduct that involves action or inaction of a serious nature' that is:

contrary to law, or
unreasonable, unjust, oppressive or improperly discriminatory; or
based wholly or partly on improper motives.

A range of examples of conduct that might be considered maladministration is outlined in the *Protected Disclosures Guidelines* published by the Ombudsman. Maladministration can also include conduct considered corrupt under the ICAC Act.

To contact the NSW Ombudsman:

Phone: (02) 9286 1000

1800 451 524 (toll free)

Address: Level 23, 580 George Street Sydney 2000

Website: www.nswombudsman.nsw.gov.au

- **Misuse of public resources**

Using public resources for something other than what they were allocated for.

- **Nepotism**

Patronage bestowed by public officers in consideration of a family relationship and not merit.

- **Operational matters**

Everything the ICAC does as part of its investigative function, other than public inquiries, is referred to as operational. The ICAC does not discuss or give out any information about operational matters. Disclosing operational matters could compromise investigative activity, and may unfairly damage the reputations of persons who are the subject of the complaint or referral.

- **Pecuniary interest**

A situation where a public official has a personal monetary interest in their official duties. For example, a local council employee makes decisions about development applications for their own business.

- **Perverting the course of justice**

Deliberately attempting to mislead administrators of the court.

- **Perjury**

The wilful utterance of a false statement under oath or affirmation, before a competent tribunal, upon a point material to a legal inquiry.

- **Public authority**

A public authority is defined in section 3 of the ICAC Act and can include:

- a government department, administrative office or teaching service

- a statutory body representing the Crown

- a declared authority under the Public Service Act 1979

- a local government authority

- a body which keeps account of administration or working expenses under the Public Finance and Audit Act 1983, or over which the Auditor-General has authority.

In many cases it is quite obvious whether a particular body falls within the definition, for example, the Department of Community Services or the State Rail Authority. There is a

wide range of organisations which are also public authorities including state owned corporations, government trading enterprises and local government councils.

- **Public Inquiry**

Replaces the term 'public hearing' under amendments to the ICAC Act which came into effect on 1 July 2005.

- **Public official**

A public official is defined in the ICAC Act as an individual having public official functions or acting in an official capacity. Public authority employees and individuals who are members of certain boards such as the Board of the State Rail Authority, for example, would be considered public officials. In some circumstances private contractors and consultants could be public officials.

Public officials also include Ministers, other Members of the NSW Parliament, NSW local government councillors and NSW judges and magistrates.

Second reading speech of ICAC Act – see ICAC Act, Second reading speech - Hansard Excerpt

- **Secret profit**

Benefits gained at work without the knowledge of one's employer.

- **Secret commission**

Rewards that influence decision making.

- **Serious and substantial waste**

The NSW Auditor-General has adopted a definition that encompasses 'uneconomical, inefficient or ineffective use of resources, authorised or unauthorised, which results in significant loss or wastage of public funds or resources'. In addressing any complaint of serious or substantial waste, the nature and materiality of the waste is considered.

Contact the NSW Audit Office:

Phone: (02) 9285 0075

Address: Level 11, 234 Sussex Street, Sydney NSW 2000

GPO Box 12, Sydney NSW 2001

Website: www.audit.nsw.gov.au

- **Tampering with evidence**

To meddle, especially for the purpose of altering, damaging, misusing something. Suppressing, concealing, destroying, altering or falsifying evidence that is or may be required in a judicial proceeding.

- **Theft**

The act of stealing. For example, claiming travel-allowance from two sources for the same trip.

- **Treating**

To provide someone with goods, services or information as an inducement. For example, a human resources manager takes a potential employee out to lunch as an inducement to take up the job.

- **Unauthorised access or release of information**

Using information that the public official is not supposed to have access to, or failure to protect unauthorised use, or disclosure of information given in confidence or in connection with the performance of public duty or function. Giving information to others when they are

not supposed to have it.

- **Victimisation**

To make a victim of someone. To discipline or punish selectively or unfairly, especially as a result of an industrial dispute.